

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. S-1695**

**PETITION OF HILL & SANDERS FORD, INC.  
[NEW HOLDER: 11250 VEIRS MILL ROAD, LLC]**

OPINION OF THE BOARD  
(Opinion Adopted April 1, 2009)  
(Effective Date of Opinion: June 18, 2009)

Case No. S-1695 is a special exception which the Board of Appeals granted to Hill and Sanders Ford on August 24, 1989 pursuant to Section 59-G-2.39 of the Zoning Ordinance to permit off-street parking in connection with a commercial use.

The subject property contains approximately 9,500 square feet, comprising Lot 1, Block J, Kensington View-Section Two Subdivision, located at 11216 East Avenue, Kensington, Maryland 20895 in the R-60 Zone.

On April 1, 2009, the Board of Appeals held a Show Cause Hearing on the special exception. Malcolm Spicer, Esquire appeared on behalf of the Montgomery County Department of Permitting Services (DPS). He called Barbara Piczak, an inspector for the department, as a witness. Anne Marie Vassallo, Esquire appeared on behalf of 11250 Veirs Mill Road, LLC, the owner of the subject property. She called Chris Lindsey as a witness. Stephanie Savolaine testified on behalf of the Kensington View Civic Association.

**FACTS**

1. The Show Cause Hearing was based upon a memorandum request from Ms. Piczak, dated July 11, 2008, and upon an Inspection Report she issued to Hill and Sanders Ford on March 10, 2008.
2. The Inspection Report lists the following violations:
  - "1. A transfer of the special exception is required from Hill & Sanders Ford to the current property owner, 11250 Veirs Mill Road LLC, c/o Lindsay Automotive Group" as the property ownership was transferred.

2. Noncompliant with 'Opinion of the Board' S-1695, dated 8-24-1989, Condition #1: Petitioner is bound by all testimony and evidence in the record. The following violations of the approved landscaping plan, Exhibit #22 (excerpted copy attached), were noted:
  - a. Asphalt paving is installed in public right-of-way (planting area) adjacent to driveway apron.
  - b. Vehicle(s) parking in 'No Parking' area along East Avenue in right-of-way, on asphalt paved area, and on driveway apron.
  - c. Landscaping plantings missing from site, including: two Eastern White Pine trees along Upton Drive, one Red Maple tree along East Avenue, and two Euonymus shrubs along East Avenue.
  - d. Railroad tie edging used to delineate parking area (i.e. setbacks) is not installed.
  - e. Vehicles are parked within the parking restriction setbacks (10' along East Ave.; 8' abutting 11218 East Ave.; 25' along Upton Drive' and 10' abutting 11205 Upton Drive).
  - f. Landscape posts and wire to East Avenue perimeter are missing and/or damaged.
3. Noncompliant with 'Opinion of the Board' S-1695, dated 8-24-1989, condition #2. the parking of Super Duty trucks and vans is not permitted on this site. The property shall be used for the parking of '*21 new automobiles.*'

NOTE: Litter is accumulating around perimeter of property and signs/placards are being stored inside the enclosed area."

3. At the Show Cause Hearing, Ms. Piczak testified about her inspections of the special exception. She stated that some violations were abated but that some were still outstanding, specifically: 1) the requirement to plant a maple tree has been complicated by the installation of a public sidewalk; 2) that while concrete wheel stops have been installed in satisfaction of Violation 2(d), those installed adjacent to Upton Drive may need to be moved to comply with a 25-foot setback. The Board discussed this setback with Ms. Piczak and determined that the 25-foot setback was a condition of the special exception, but is not otherwise required by the Zoning Ordinance. In response to a Board question, Ms. Piczak opined that since there is now a solid fence screening the special exception property, the 25-foot setback inside the fence is not necessary.
4. The record before the Board contained a letter, dated December 30, 2008, from David D. Freishtat, Esquire and Anne Marie Vassallo, Esquire, on behalf of 11250 Veirs Mill Road LLC. The letter acknowledges the results of Ms. Piczak's inspections of the special exception, and requests modification to permit 1) transfer of the special exception to 11250 Veirs Mill Road, LLC; 2) planting of the missing red maple or similar shade tree, without the necessity to remove another tree for that purpose; 3) concrete wheel stops (existing) instead of the timbers or railroad ties mentioned in the opinion granting the special exception;

and delineation of the parking area with the setbacks shown on Exhibit No. 38(d).

5. Ms. Savolaine stated that she lives two doors down from the special exception and has observed parking of a variety of vehicles on the lot, including trucks. Ms. Savolaine said that the accumulation of trash and the infrequent maintenance of the landscaping on the site are major issues for the neighbors. Ms. Savolaine stated that these issues contribute to a “character of urban blight...that’s very discouraging.” [Transcript, April 1, 2009, p. 24]. Ms. Savolaine also raised the problem of off loading of vehicles from large, flatbed tow trucks, on East Avenue and Upton Drive. She explained that this unloading can keep residents from getting in and out of the neighborhood because of the limited ingress and egress to the neighborhood.
6. Ms. Vassallo pointed out that Mr. Lindsey’s principal car dealership is directly across the street from the special exception property, with a garage and service area entrance on East Avenue.
7. The Board expressed concern about the impact of unloading or loading vehicles from East Avenue and Upton Drive, and discussed amending Condition No. 7 of its August 24, 1989 Opinion, but concluded that this issue was outside the scope of the Show Cause proceeding, because Section 59-G-1.3(e)(5) limits the subject of Show Cause hearings to issues noted in the Show Cause order and Notice of Hearing. Because this issue was not part of the Special Exception Inspection Report, it was not included in the Board’s Show Cause order or Notice of Hearing. The Board suggested that DPS and Mr. Lindsey discuss a solution to this problem that would not necessitate further show cause proceedings.
8. The Board also suggested to DPS and Mr. Lindsey that they discuss Condition No. 2 – which permits parking only of new automobiles – to see whether clarification of the condition would be helpful in light of the fact that, provided parked vehicles do not exceed its height, the existing fence fully screens the site.

## **CONCLUSIONS OF LAW**

1. Section 59-G-1.3(e)(6) of the Zoning Ordinance provides that in the context of a Show Cause Hearing, the Board of Appeals “by the affirmative vote of at least 4 members, may reaffirm or revoke the special exception, or amend, add to, delete or modify the existing terms or conditions of the special exception.”
2. The Board finds that the special exception holder has abated some of the violations which were the subject of the show cause hearing, and that the requested modifications address those that remain outstanding. The Board dismisses the show cause hearing, and grants the requested modifications as follows:

- 1) delete the requirement to plant a Maple tree;
- 2) permit concrete wheel stops instead of railroad ties;
- 3) delete the requirement (shown on Exhibit 4 in the record) for wheel stops to be set back farther than the current position of the fence [See Exhibit 38(d)];
- 4) grant the transfer of the special exception to 11250 Veirs Mill Road LLC.

On a motion by David K. Perdue, Vice-Chair, seconded by Carolyn J. Shawaker, with Walter S. Booth, Stanley B. Boyd and Catherine G. Titus, Chair, in agreement, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

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Catherine G. Titus  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 18<sup>th</sup> day of June 2009.

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Katherine Freeman  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.